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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARTIN KAUFMAN; IREATHA DIANE
MITCHELL; ROSEMARY SENGHER; AND
LEMUEL SCHENCK, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

AIR NEW ZEALAND, LTD.; ALL NIPPON
AIRWAYS CO., LTD.; CATHAY PACIFIC
AIRWAYS; CHINA AIRLINES, LTD.; EVA
AIRWAYS CORP.; JAPAN AIRLINES
CORP.; MALAYSIA AIRLINES;
NORTHWEST AIRLINES CORP.; QANTAS
AIRWAYS, LTD.; SINGAPORE AIRLINES,
LTD.; THAI AIRWAYS INTERNATIONAL
PUBLIC COMPANY, LTD.; and UNITED
AIRLINES,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

ORIGINAL
FILED

DEC 19 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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CLASS ACTION COMPLAINT

Plaintiffs Martin Kaufman ("Kaufman"), Ireatha Diane Mitchell ("Mitchell"), Rosemary Senger ("Senger"), and Lemuel Schenck ("Schenck") on behalf of themselves and all others similarly situated in the United States, bring this action for treble damages and injunctive relief under the federal antitrust laws of the United States against the Defendants named herein, demanding trial by jury, and complaining and alleging as follows:

NATURE OF THE CASE

1. This lawsuit is brought as a class action on behalf of individuals and entities that purchased airline tickets for long haul passenger transpacific flights to and from the United States ("Air Passenger Services") from Defendants, their predecessors, or their controlled subsidiaries and affiliates during the period beginning no later than January 1, 2004 and continuing through the present (the "Class Period"). Plaintiffs allege that during the Class Period the Defendants conspired to fix, raise, maintain or stabilize surcharges for fuel ("Fuel Surcharges") in airline passenger transport fees assessed to individuals or companies seeking transport via air on behalf of themselves or others ("Airline Customers"). Plaintiffs allege that the Defendants have acted in concert to exact from Plaintiffs and other customers similarly situated, often identical Fuel Surcharges on top of the rates they normally charge for long-haul flights.

2. Defendants have ostensibly imposed Fuel Surcharges to defray the increased costs they have incurred for jet fuel. However, instead of individually and competitively negotiating the Fuel Surcharges with their customers, Defendants have conspired to fix, implement and maintain the level of Fuel Surcharges. They have used their cartel to increase Fuel Surcharges in lockstep, in amounts that exceed Defendants' actual fuel costs and generate substantial profits. Because of Defendants' unlawful conduct, Plaintiffs and other Class Members paid artificially inflated prices for Air Passenger Services and have suffered antitrust injury to their business or property.

3. At all relevant times herein, Defendants were airlines that conducted and sold Air Passenger Services, and charged fixed Fuel Surcharges on that transport, to Airline Customers in

1 the United States and throughout the world, including but not limited to flights to and from Los
2 Angeles and San Francisco, California. Los Angeles International Airport ("LAX") and San
3 Francisco International Airport ("SFO") are considered the international U.S. gateways to Asian
4 and Pacific countries. The U.S. Department of Transportation reported that in 2005 LAX and
5 SFO were ranked the top U.S. passenger gateways to the world in scheduled passenger service.
6 That year, LAX and SFO had 24.6 million gateway passengers, with the foreign share of the
7 passengers at an average of 67%.

8 4. Plaintiffs allege that Defendants' cartel and concerted anticompetitive conduct is
9 in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, which prohibits restraints of trade.
10 Plaintiffs seek treble damages and injunctive relief on behalf of themselves and all other
11 similarly situated purchasers of Air Passenger Services during the Class Period.

12 JURISDICTION AND VENUE

13 5. This Court has subject matter jurisdiction over this action based on Section 4 of
14 the Clayton Act, 15 U.S.C. §15, which confers to the United States district courts jurisdiction
15 over actions seeking damages and costs, including reasonable attorneys' fees, for violations of
16 the Sherman Act. Section 16 of the Clayton Act, 15 U.S.C. §16, is the basis for this Court's
17 jurisdiction over Plaintiffs' claim for injunctive relief. This Court also has jurisdiction under 28
18 U.S.C. §1331, which vests the district courts with jurisdiction over actions, such as this one,
19 which arise under federal law, and under 28 U.S.C. §1337, which grants the district courts
20 jurisdiction under the federal antitrust laws.

21 6. This Court has personal jurisdiction over Defendants because they systematically
22 and continually conduct business in the United States, including marketing, advertising, and
23 sales directed to residents here.

24 7. Venue is laid in this District pursuant to 28 U.S.C. § 1391. Venue is proper in
25 this judicial district because during the Class Period one or more of the Defendants resided,
26 transacted business, was found, or had agents in, this district, and because a substantial part of
27 the events giving rise to Plaintiffs' claims occurred in this district, and a substantial portion of
28

1 the affected portion of the interstate trade and commerce described below has been carried out in
2 this district.

3 **DEFINITIONS**

4 8. As used herein, the term "Air Passenger Services" includes airline tickets
5 purchased for international air transportation services containing at least one transpacific flight
6 segment.

7 9. The "Class Period" or "relevant period" means the period from no later than
8 January 1, 2004 and continuing through the present.

9 10. "Person" means any individual, partnership, corporation, association, or other
10 business or legal entity.

11 **PLAINTIFFS**

12 11. Plaintiff Martin Kaufman ("Kaufman") is a California resident. During the
13 relevant period, Kaufman purchased Air Passenger Services directly from one or more of the
14 Defendants or their co-conspirators and has been injured by reason of the antitrust violations
15 alleged in this Complaint.

16 12. Plaintiff Ireatha Diane Mitchell ("Mitchell") is a California resident. During the
17 relevant period, Mitchell purchased Air Passenger Services directly from one or more of the
18 Defendants or their co-conspirators and has been injured by reason of the antitrust violations
19 alleged in this Complaint.

20 13. Plaintiff Rosemary Senger ("Senger") is a Louisiana resident. During the relevant
21 period, Senger purchased Air Passenger Services directly from one or more of the Defendants or
22 their co-conspirators and has been injured by reason of the antitrust violations alleged in this
23 Complaint.

24 14. Plaintiff Lemuel Schenck ("Schenck") is a Louisiana resident. During the
25 relevant period, Schenck purchased Air Passenger Services directly from one or more of the
26 Defendants or their co-conspirators and has been injured by reason of the antitrust violations
27 alleged in this Complaint.

28 //

DEFENDANTS

15. Defendant Air New Zealand, Ltd. ("Air New Zealand") is a New Zealand company headquartered at Level 19, Quay Tower, 29 Customs St. West, Auckland, 1020, New Zealand. Air New Zealand is considered the South Pacific's largest international carrier with a focus on Australia and the South Pacific. The airline provides service within New Zealand, as well as to and from Australia, the South Pacific, Asia, North America and the United Kingdom. Air New Zealand operates daily non-stop flights from San Francisco to Auckland. During the Class Period, Air New Zealand sold Air Passenger Services throughout the world including to customers in the United States.

16. Defendant All Nippon Airways Co., Ltd. ("All Nippon") is a Japanese company headquartered in Shiodome-City Center, 1-5-2, Higashi-Shimbashi, Minator-Ku, Tokyo, 105-7133, Japan. All Nippon is Japan's second largest domestic and international airlines after Japan Airlines Corporation, operating 49 domestic and 22 international routes. During the Class Period, All Nippon sold Air Passenger Services throughout the world, including to customers in the United States.

17. Defendant Cathay Pacific Airways ("Cathay Pacific") is a Hong Kong-based company with its principal place of business at 9 Connaught Road, Central Swirel Housepox 1 GPO, Hong Kong K3. Cathay Pacific has airport locations throughout the world, including the United States, and specifically at SFO and LAX. During the Class Period, Cathay Pacific sold Air Passenger Services throughout the world, including to customers in the United States.

18. Defendant China Airlines, Ltd. ("China Air") is a Taiwanese company headquartered at 131, Sec. 3, Nanking E Rd., Taipei, Taiwan. China Air was the first Asian carrier to fly the transpacific route between Taiwan and the United States. It services 68 cities in 25 countries. During the Class Period, China Air sold Air Passenger Services throughout the world, including to customers in the United States.

19. Defendant EVA Airways Corporation ("EVA Air") is a Taiwanese company headquartered at 117, Sec. 2, Chang-An E. Rd., Taipei, 104, Taiwan. EVA Air is the largest privately owned Taiwanese airline. It operates passenger service to international destinations in

1 Asia, Australia, New Zealand, Europe and North America. During the Class Period, EVA Air
2 sold Air Passenger Services throughout the world, including to customers in the United States.

3 20. Defendant Japan Airlines Corporation ("Japan Air") is a Japanese company
4 headquartered at 4-11 Higashi-shinagawa 2 chome, Shinagawa-Ku, Tokyo, 140-8638, Japan.
5 Japan Air was created in 2002 through the merger of Japan Airlines and Japan Air Systems.
6 Japan Air is one of the largest air carriers in the world and the largest airline operator in Asia.
7 During the Class Period, Japan Air sold Air Passenger Services throughout the world, including
8 to customers in the United States.

9 21. Defendant Malaysia Airlines is a Malaysian corporation with its principal place
10 of business located at MAS Complex A, Sultan Abdul Azia Shah Airport, 47200 Suband,
11 Selangor Darui Ehsan, Malaysia. During the Class Period, Malaysia Airlines sold Air Passenger
12 Services throughout the world, including to customers in the United States.

13 22. Defendant Northwest Airlines Corporation ("Northwest") is a Delaware
14 corporation headquartered at 2700 Lone Oak Pkwy, Eagan, Minnesota 55121. Northwest flies to
15 more than 240 cities in North America, Asia, and Europe. It operates more than 200 non-stop
16 flights between the United States and Asia each week. During the Class Period, Northwest sold
17 Air Passenger Services throughout the world, including to customers in the United States.

18 23. Defendant Qantas Airways, Ltd. ("Qantas") is an Australian company
19 headquartered at 203 Coward Street, Mascot, NSW 2020, Australia. Qantas is the largest
20 domestic and international carrier in Australia. During the Class Period, Qantas sold Air
21 Passenger Services throughout the world, including to customers in the United States.

22 24. Defendant Singapore Airlines, Ltd. ("Singapore Air") is a Singaporean company
23 headquartered at Airline House, 25 Airline Road, Singapore 819829. Singapore Air is one of
24 Asia's leading airlines. During the Class Period, Singapore Air sold Air Passenger Services
25 throughout the world, including to customers in the United States.

26 25. Defendant Thai Airways International Public Company, Ltd. ("Thai Air") is a
27 Thai company headquartered at 89 Vibhavadi Rangsit Road, Bangkok, 10900, Thailand. Thai
28

1 Air flies to 74 destinations in 34 countries on four continents. During the Class Period, Thai Air
2 sold Air Passenger Services throughout the world, including to customers in the United States.

3 26. Defendant United Airlines ("United") is a Delaware corporation with its principal
4 place of business located at 77 W. Wacker, Chicago, IL 60601. United is one of the largest
5 passenger airlines in the world with more than 3,600 flights a day to more than two hundred
6 destinations. United is the largest employer in San Mateo County, California, which is located in
7 this district. During the Class Period, United sold Air Passenger Services throughout the world,
8 including to customers in the United States.

9 27. Defendants identified above are sometimes collectively referred to herein as the
10 "Air Passenger Carriers."

11 **DEFENDANTS AND CO-CONSPIRATORS**

12 28. Various other air passenger carriers, trade associations, persons and/or entities,
13 not named as Defendants herein, have participated as co-conspirators with Defendants and have
14 performed acts and made statements in furtherance of the conspiracy and/or in furtherance of the
15 anticompetitive, unfair or deceptive conduct alleged herein. The allegations in this Complaint
16 apply equally to these unnamed co-conspirators.

17 29. Whenever in this Complaint reference is made to any act, deed or transaction of
18 any corporation, the allegation means that the corporation engaged in the act, deed or transaction
19 by or through its officers, directors, agents, employees or representatives while they were
20 actively engaged in the management, direction, control or transaction of the corporation's
21 business or affairs.

22 30. Each of the Defendants named herein acted as the agent or joint venturer of or for
23 the other Defendants with respect to the acts, violations and common course of conduct alleged
24 herein.

25 **INTERSTATE TRADE AND COMMERCE**

26 31. Throughout the Class Period, the Air Passenger Services purchased from
27 Defendants by Plaintiffs and the other Class members created a continuous and uninterrupted
28 flow of transactions between Air Passenger Carriers and Airline Customers for air travel within,

1 to, and from the United States, including this District. Defendants' unlawful conduct took place
2 within the flow of interstate commerce and affected Airline Customers located throughout the
3 United States, including this District, as well as throughout the world. Defendants' unlawful
4 conduct had a direct, substantial, and reasonably foreseeable effect in restraint of trade on both
5 interstate and international commerce.

6 **CLASS ACTION ALLEGATIONS**

7 32. Plaintiffs bring this action on behalf of themselves and as a class action under the
8 provisions of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all
9 members of the following class:

10 All persons and/or entities that purchased Air Passenger Services containing at
11 least one transpacific flight segment to or from the United States from one or
12 more of the Defendants, any other co-conspirators, or any present or former
13 parent, subsidiary or affiliate of Defendants, at any time during the period from
14 no later than January 1, 2004 to the present. Excluded from the Class are
15 Defendants, their co-conspirators, all present or former parents, predecessors,
16 subsidiaries or affiliates of Defendants, and all governmental entities.

17 33. This action has been brought and may properly be maintained as a class action
18 pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following reasons:

19 a. The Class is ascertainable and there is a well-defined community of
20 interest among members of the Class;

21 b. Based upon the nature of trade and commerce involved and the number of
22 purchasers of Air Passenger Services from Defendants and their co-conspirators, Plaintiffs
23 believe that the members of the Class number in the thousands, and therefore are sufficiently
24 numerous that joinder of all Class members is not practicable;

25 c. Plaintiffs' claims are typical of the claims of the members of the Class
26 because Plaintiffs purchased Air Passenger Services from Defendants or their co-conspirators,
27 and therefore Plaintiffs' claims arise from the same common course of conduct giving rise to the
28 claims of the members of the Class and the relief sought is common to the Class;

d. The following common questions of law or fact, among others, exist as to
the members of the Class:

1 i. Whether Defendants formed and operated a combination or
2 conspiracy to fix, raise, maintain, and/or stabilize the prices of, or allocate the market for, Air
3 Passenger Services containing transpacific flight segments to and from the United States during
4 the Class Period;

5 ii. Whether the combination or conspiracy caused prices for Air
6 Passenger Services to be higher than they would have been in the absence of Defendants'
7 conduct;

8 iii. The operative time period of Defendants' combination or
9 conspiracy;

10 iv. Whether Defendants' conduct caused injury to the business or
11 property of Plaintiffs and the members of the Class;

12 v. The appropriate measure of the amount of damages suffered by
13 the Class;

14 vi. Whether Defendants' conduct violates Section 1 of the Sherman
15 Act;

16 vii. Whether Defendants took steps to actively conceal their
17 conspiracy; and

18 viii. The appropriate nature of class-wide equitable relief.

19 e. These and other questions of law and fact common to the members of the
20 Class predominate over any questions affecting only individual members, including legal and
21 factual issues relating to liability and damages;

22 f. After determination of the predominant common issues identified above,
23 if necessary or appropriate, the Class can be divided into logical and manageable subclasses;

24 g. Plaintiffs will fairly and adequately protect the interests of the Class in
25 that Plaintiffs have no interests that are antagonistic to other members of the Class and have
26 retained counsel competent and experienced in the prosecution of class actions and antitrust
27 litigation to represent them and the Class;
28

1 h. A class action is superior to other available methods for the fair and
2 efficient adjudication of this litigation since individual joinder of all damaged Class members is
3 impractical. The damages suffered by the individual Class members are relatively small, given
4 the expense and burden of individual prosecution of the claims asserted in this litigation. Thus,
5 absent the availability of class action procedures it would not be feasible for Class members to
6 redress the wrongs done to them. Even if the Class members could afford individual litigation,
7 the court system could not. Further, individual litigation presents the potential for inconsistent or
8 contradictory judgments and would greatly magnify the delay and expense to all parties and the
9 court system. Therefore, the class action device presents far fewer case management difficulties
10 and will provide the benefits of unitary adjudication, economy of scale and comprehensive
11 supervision in a single court;

12 i. Defendants have acted, and/or refused to act, on grounds generally
13 applicable to the Class, thereby making appropriate final injunctive relief with respect to the
14 Class as a whole; and

15 j. In the absence of a class action, Defendants would be unjustly enriched
16 because they would be able to retain the benefits and fruits of its wrongful conduct.

17 **BACKGROUND**

18 34. Throughout the period covered by this Complaint, Defendants and their co-
19 conspirators engaged in the business of marketing and selling Air Passenger Services containing
20 transpacific flight segments to and from the United States.

21 35. Each Defendant possesses significant market share on their routes of travel. The
22 principal competitors for the Defendants in the transpacific long haul passenger air
23 transportation market are therefore each other.

24 36. Air Passenger Services are a commodity that can be provided by any one air
25 passenger carrier, and can be readily substitutable for any other air passenger carrier.

26 37. Air Passenger Services are homogenous services sold by airlines, including
27 Defendants, to Airline Customers such as Plaintiffs and the members of the Class, primarily
28 based on price.

1 38. The Air Passenger Services market in the United States and worldwide is highly
2 concentrated, and substantial barriers to entry exist. Both factors facilitate the implementation
3 and maintenance of a horizontal price-fixing cartel such as this conspiracy perpetrated by
4 Defendants.

5 39. The international airline industry is characterized by what has been called “hub
6 and spoke operations.” A hub is an airport that an airline strategically designates as a transfer
7 point to get passengers to destinations that are not served by direct flights. The hub and spoke
8 system enables airlines to serve many more markets than they could with the same size fleet if
9 they offered only direct, point-to-point service. The use of hub airports is efficient because it
10 allows airlines to concentrate its human and technical resources in a few locations. Many
11 airlines locate their hubs at airports in the cities of their head office.

12 40. There are preferential arrangements between hub-dominated airlines and their
13 hub airports. Most hub airports will support only one or two airlines, thereby insulating those
14 airlines from competition and giving them a substantial amount of monopoly power.

15 41. The airlines’ market power is further bolstered for transpacific routes because
16 unlike short domestic flight routes, there are no reasonable alternatives to air travel. In addition,
17 there is less competition from low-fare airlines in the international air travel market.

18 42. Profitability in the airline industry has always been quite low, generally ranging
19 from 2 to 3 percent net profit after interest and taxes, even in good years. Historically, airlines
20 have survived largely through state support, either in the form of equity or subsidies.

21 43. Full service airlines such as Defendants, have a high level of operating costs,
22 including labor, fuel, aircrafts, spare parts, information technology networks and services,
23 airport equipment, airport handling services, sales distribution, catering, training, and aviation
24 insurance.

25 44. In the past, airlines have attributed anywhere from 10 to 20 percent of their
26 operating costs to jet fuel. Fuel costs vary considerably among airlines due to a number of
27 unique factors. These factors include variable currency rates, the efficiency of the aircrafts, air
28 route designs, air traffic control, and the individual airline’s conservation efforts.

1 45. Fuel costs also vary among airlines because of the use of hedging, an investment
2 strategy that locks in future fuel costs at a certain price. Different airlines hedge their fuel costs
3 to different degrees. For example, in 2005, Thai Air hedged 31 percent of its annual fuel needs.
4 In 2006, Qantas hedged 70 percent of its 2007 fuel costs. Air New Zealand has hedged 62
5 percent of its 2007 estimated fuel use.

6 46. During the class period, Defendants herein have imposed fuel surcharges in
7 addition to base fares for passenger air travel. Airlines advertise fares without including taxes,
8 charges and additional fees. In this regard, the true cost of passenger air transportation services
9 is not readily apparent to travelers.

10 47. The fares for passenger air service, although not readily available to travelers for
11 comparison, are available to the airlines. For example, ATPCO is a company that collects and
12 distributes, for a fee, airline fares and fare-related data to the industry. The free flow of this type
13 of information within the industry has allowed defendants to monitor their conspiracy and verify
14 that it is working.

15 **DEFENDANTS' FUEL SURCHARGES**

16 48. Generally, surcharges are a feature of the global air transportation market by
17 which airlines negotiate to charge extra fees to their customers, above and beyond basic flight
18 rate charges, with the intent of defraying certain costs of the carriers.

19 49. Beginning no later than January 1, 2004, Defendants agreed to act in concert with
20 one another in demanding Fuel Surcharges to defray fuel costs and agreeing when and how
21 much to increase the surcharges to their Airline Customers.

22 50. Defendants were aware that their imposition of Fuel Surcharges and other
23 surcharges would not be successful if their supposed competitors did not join them; otherwise,
24 customers would be free to seek out lower prices. For this reason, Defendants entered into
25 agreements to raise Fuel Surcharges at the same times and in the same amounts.

26 51. Defendants implemented their agreement to fix, raise, maintain and/or stabilize
27 Fuel Surcharges by publicly announcing previously agreed-upon increases, and by exchanging
28 information in secret, including the total ticket prices to Airline Customers for Airline Passenger

1 Services, for the purpose of monitoring and enforcing the previously agreed-upon Fuel
2 Surcharges levels.

3 52. Due to Defendants' concerted action, prices of Fuel Surcharges were fixed,
4 raised, maintained and/or stabilized at artificial and supra-competitive levels throughout the
5 Class Period.

6 53. Examples of Defendants' lockstep increases in Fuel Surcharges include, but are
7 not limited to, the following:

8 a. On May 11, 2004, defendant Qantas and several other major airlines
9 announced they would begin imposing Fuel Surcharges on passenger flights. Qantas' Fuel
10 Surcharge—AU\$15 for international flights—would go into effect on May 17, 2004 and would
11 be in addition to increases in passenger airfares. The very next day, Air New Zealand announced
12 that it too would begin imposing Fuel Surcharges on passenger flights. Like Qantas, Air New
13 Zealand's Fuel Surcharges of NZ\$20 for international flights would go into effect on May 17,
14 2004.

15 b. On June 7, 2004, China Air began collecting a US\$7 Fuel Surcharge on
16 passenger air travel, and Singapore Air began collecting a US\$5 Fuel Surcharge on its flights.

17 c. On August 20, 2004, Qantas announced the first of several increases in its
18 Fuel Surcharge. Qantas' increased Fuel Surcharge was AU\$22 for international flights. Six days
19 later, Air New Zealand announced it would raise its Fuel Surcharge as well.

20 d. On October 20, 2004, Qantas raised Fuel Surcharges for the second time
21 in less than six months to AU\$29 for international flights. Notably this increase was despite the
22 fact that Qantas' fuel costs were fully hedged through the end of the year. The announcement
23 came one day after Qantas reported a record full-year net profit of AU\$648 million. Six days
24 after Qantas raised its Fuel Surcharges, Air New Zealand followed suit by raising its own Fuel
25 Surcharges for international flights.

26 e. On November 1, 2004, EVA Air began imposing a US\$17 Fuel
27 Surcharge on air travel.

28 f. Singapore Air raised its Fuel Surcharge on November 15, 2004.

1 g. On February 1, 2005, All Nippon and Japan Air both implemented, for
2 the first time, a Fuel Surcharge of US\$24 on flights between North America and Japan. The
3 same day, Singapore Air raised its Fuel Surcharge for international flights to US\$22.

4 h. On March 28, 2005, Qantas raised its Fuel Surcharges on international
5 flights to US\$35. On April 6, 2005, Air New Zealand followed Qantas' lead by raising its Fuel
6 Surcharge on long haul flights to NZ\$52.

7 i. Beginning May 1, 2005, Thai Air charged a US\$25 Fuel Surcharge on
8 international flights.

9 j. On July 1, 2005, All Nippon and Japan Air simultaneously raised Fuel
10 Surcharges on travel between North America and Japan.

11 k. On August 1, 2005, Thai Air raised Fuel Surcharges on international
12 flights, including those to and from the United States, to US\$35. Later that month on August 16,
13 2005, it raised Fuel Surcharges on international flights to US\$50.

14 l. Air New Zealand raised Fuel Surcharges on August 22, 2005 to NZ\$92
15 for international flights. The next day, Qantas announced it would increase its Fuel Surcharges
16 on international flights to AU\$75.

17 m. On October 13, 2005, Northwest raised its Fuel Surcharge on transpacific
18 flights to US\$65.

19 n. On April 21, 2006, Qantas increased its Fuel Surcharge on international
20 travel to US\$65.

21 o. On May 15, 2006, China Air raised its Fuel Surcharge for travel between
22 Taiwan and the United States to US\$70—ten times the original Fuel Surcharge implemented
23 less than two years before. On May 16, 2006, EVA Air also raised its Fuel Surcharge for travel
24 between Singapore and the United States to US\$65. On May 19, 2006, Singapore Air raised its
25 Fuel Surcharges for international flights to US\$90. By May 22, 2006, Air New Zealand and
26 Qantas were both charging US\$65 in Fuel Surcharges for international flights.

1 p. On June 1, 2006, Thai Air raised its Fuel Surcharges on travel between
2 the United States and Bangkok to US\$65, matching the Fuel Surcharges of EVA Air, Air New
3 Zealand, and Qantas.

4 q. On July 25, 2006, Northwest raised its Fuel Surcharge for travel between
5 the United States and Singapore to \$90, the same surcharge implemented by Singapore Air a
6 couple of months earlier.

7 r. On August 24, 2006, China Air raised its Fuel Surcharge for flights to and
8 from the United States to US\$95.

9 s. On August 31, 2006, Qantas raised its Fuel Surcharges again to AU\$185,
10 while keeping domestic Fuel Surcharges unchanged.

11 t. Thai Air increased its Fuel Surcharges on international flights once again
12 on September 1, 2006. Six days later, United Airlines raised Fuel Surcharges on travel between
13 the United States and Singapore to US\$90, the same surcharge that Singapore Air and
14 Northwest were charging. Notably, there was a ten percent decline in prices for crude oil in
15 September 2006, the largest decline in 21 months.

16 u. On October 1, 2006, All Nippon and Japan Air both raised their Fuel
17 Surcharges for transpacific travel to US\$113.

18 v. On October 14, 2006, Singapore Air lowered Fuel Surcharges for travel
19 between the United States and Singapore to US\$82.

20 w. Following the lead of Singapore Air, on January 1, 2007, All Nippon and
21 Japan Air lowered Fuel Surcharges on travel between North America and Japan to US\$108.

22 x. Also in January 2007, Qantas announced that due to a 25 percent drop in
23 jet fuel prices over the preceding five months, it would reduce Fuel Surcharges on certain of its
24 flights. However, Qantas did not reduce the surcharges on any of its long haul flights, including
25 transpacific flights to or from the United States. Consistent with Qantas, Air New Zealand's
26 Fuel Surcharges on transpacific flights remained unchanged in early 2007.

27 y. Singapore Air lowered its Fuel Surcharge on travel between the United
28 States and Singapore to US\$78 on February 1, 2007.

z. On May 1, 2007, All Nippon and Japan Air both lowered Fuel Surcharges on international flights to US\$91.

aa. On July 30, 2007, Northwest raised Fuel Surcharges for travel between the United States and Singapore to US\$115.

bb. On August 10, 2007, EVA Air raised its Fuel Surcharge to US\$103 on transpacific flights to and from the United States.

cc. On October 1, 2007, All Nippon and Japan Air raised their Fuel Surcharges to US\$108. The same day, Thai Air increased its Fuel Surcharge for travel between the United States and Thailand to US\$140.

dd. By November 7, 2007, Singapore Air was charging US\$104 in Fuel Surcharges for travel between the United States and Singapore.

54. Published flight prices and surcharges for November 2007 demonstrate that Defendants' collusive pricing is continuing:

San Francisco to Auckland

Airline	Cabin	Base Fare	Surcharges	Total
Air New Zealand	Coach	\$918	\$255	\$1173
Qantas	Coach	\$918	\$255	\$1173

San Francisco to Bangkok

Airline	Cabin	Base Fare	Surcharges	Total
All Nippon	Coach	\$650	\$281	\$931
Japan Air	Coach	\$620	\$281	\$901

San Francisco to Hong Kong

Airline	Cabin	Base Fare	Surcharges	Total
All Nippon	Coach	\$580	\$269	\$849
Japan Air	Coach	\$579	\$269	\$848

San Francisco to Seoul

Airline	Cabin	Base Fare	Surcharges	Total
All Nippon	Coach	\$620	\$296	\$916
Japan Air	Coach	\$620	\$289	\$909

San Francisco to Sydney

Airline	Cabin	Base Fare	Surcharges	Total
Air New Zealand	Coach	\$818	\$312	\$1130
Qantas	Coach	\$818	\$308	\$1126

San Francisco to Taipei

Airline	Cabin	Base Fare	Surcharges	Total
EVA Air	Coach	\$719	\$274	\$993
Japan Air	Coach	\$620	\$274	\$894
Qantas	Coach	\$1575	\$274	\$1849
Singapore Air	Coach	\$900	\$274	\$1174
Thai Air	Coach	\$1660	\$274	\$1934

San Francisco to Tokyo

Airline	Cabin	Base Fare	Surcharges	Total
All Nippon	Coach	\$529	\$270	\$799
Japan Air	Coach	\$529	\$270	\$799

Defendants Profited From the Fuel Surcharges

55. Surcharges are designed to compensate for increases in certain external costs, and thus should be tied to the price of those external costs. In a competitive market, when the cost of jet fuel falls, Fuel Surcharges should fall as well.

56. In a truly competitive market, the imposition of Fuel Surcharges by an airline that exceeds the actual cost of fuel consumed should create competition from others. Here, however, Defendants chose not to compete, and the only plausible explanation for that lack of competition is that Defendants were conspiring.

57. As the following aggregate industry data reported by the IATA in September 2007 demonstrates, the airline industry's operating profits were already declining before there was any substantial rise in fuel costs. This data also shows that the airlines' Fuel Surcharges, which were implemented in 2004, were not a true cost recovery mechanism, but rather a camouflaged revenue generator. Consequently, the airlines' use of Fuel Surcharges has allowed them to reach levels of profitability greater than what they had when fuel prices were stable.

	2000	2001	2002	2003	2004	2005	2006	2007f	2008f
Passenger Revenues in Billions	\$256	\$239	\$238	\$249	\$297	\$323	\$355	\$389	\$419
Expenses in Billions	\$318	\$319	\$311	\$323	\$376	\$409	\$440	\$473	\$500
Crude Oil Price, Brent, \$/barrel	\$28.8	\$24.7	\$25.1	\$28.8	\$38.8	\$54.5	\$65.1	\$67.0	\$66.0
Operating Profit in Billions	\$1.1	-\$4.2	-\$3.7	-\$2.3	-\$1.5	-\$1.0	-\$0.1	\$1.1	\$1.5

58. The fact that Defendants profited from their increasing Fuel Surcharges is further evidenced by the record profits that Defendants have experienced since implementing the surcharges.

59. In the first quarter of fiscal year 2006, All Nippon posted a net profit of 7.68 billion yen.

60. Thai Air posted a profit in the third quarter of 2006, during which it collected nearly US\$80 million in Fuel Surcharges. An August 10, 2006 article in *The China Post* quoted a securities analyst as saying that, "[t]he higher fuel surcharge in place was quite effective" in raising Thai Air's revenues.

61. In the 12 months ending June 30, 2007, Qantas saw a 49.9 percent increase in net profit. The *Sydney Morning Herald* has reported that each AU\$1 of Qantas' Fuel Surcharge on international flights translates into AU\$10 million in annual revenue.

62. On August 7, 2007, *The Japan Times* reported that Japan Air's operating loss shrank from 31.9 billion yen the prior year to 8.5 billion yen. The article further stated, "Yoshimasa Kanayama, [Japan Air] executive officer, attributed the improved earnings performance to the carriers' efforts to cut costs, brisk business demand for international flights, higher revenue per passenger achieved through fare hikes on domestic routes and *increased fuel surcharges on international flights.*" [Emphasis added]

63. On August 28, 2007, Air New Zealand announced its net profit after tax was NZ\$214 million, up 123 percent from the previous year. Notably, operating revenue increased 13 percent, while the number of passengers carried only increased 4.9 percent.

64. The IATA has reported that whereas in 2002, airlines needed an oil price of less than US\$20 a barrel to break even, they are profitable in 2007 with nearly US\$70 a barrel.

65. Through a dominant combined market share, a number of cooperative agreements to share ticket services and carry passengers for one another, and a number of methods by which they shared real time information on prices, Defendants controlled a vast majority of airline travel between the United States and the Asia/Pacific region during the Class Period and were able to fix, raise, maintain and/or stabilize Fuel Surcharges and reap enormous profits from these Fuel Surcharges paid by Plaintiffs and the members of the Class.

Cartel-Like Trade Organizations Facilitated Defendants' Conspiracy

66. Defendants' executives, as well as other air carriers' executives, met formally or informally during the Class Period at various trade meetings or meetings of trade associations, such as the International Air Transportation Association ("IATA"), the Association of Asian Pacific Airlines ("AAPA"), Oneworld, Star Alliance, and Sky Team Alliance. At one or more of these meetings Defendants conspired to artificially inflate Fuel Surcharges on international air transportation.

1 67. The AAPA was a key player in the success of this conspiracy. The 17-member
2 trade association, based in Kuala Lumpur, Malaysia, is the most significant group representing
3 Asia/Pacific carriers. The AAPA boasts that its “member airlines carry 285 million passengers
4 and 10 million tonnes of cargo representing approximately one-fifth of global passenger traffic
5 and one-third of global air cargo traffic respectively.” Defendants Air New Zealand, All Nippon,
6 EVA Air, China Air, Japan Air, Singapore Air, Qantas and Thai Air are all members of the
7 AAPA.

8 68. Each of the Defendants is a member of the IATA, which describes itself as “the
9 prime vehicle for inter-airline cooperation in promoting safe, reliable, secure and economical air
10 services....” The IATA collects and publishes industry intelligence and statistics, including
11 routes, analysis of operating and net margins, fuel consumption and unit fuel price paid, traffic
12 figures, and distribution of operating costs. Additionally, the IATA hosts multiple events each
13 year for its members, which provide an opportunity for airline executives to socialize,
14 collaborate and collude.

15 69. Examples of meeting where executives discussed and agreed upon fuel
16 surcharges are as follows:

17 a. IATA. Special Meeting, Geneva, May 28, 2004: fuel costs were the main
18 topic of this meeting and there were agreements on how to add surcharges for fuel. The
19 Montreal Gazette reported on June 1, 2004, that “member carriers of the International Air
20 Transport Association might raise international fares by as much as 5 percent to help cover a
21 surge in jet fuel costs. The proposed fare increase of between two and five percent was agreed at
22 a May 28 meeting of the association, which represents more than 270 airlines worldwide, an
23 IATA spokesman said.”

24 b. IATA Annual General Meeting and World Air Transport Summit,
25 Singapore, June 6-8, 2004: more than 600 airline executives attended this annual summit.
26 Giovanni Bisignani, IATA CEO said in a welcoming statement, “While record high fuel prices
27 challenge our profitability it is time to put our efforts toward rebuilding the industry.”
28 Immediately following this meeting on June 8, 2004, both Japan Air and All Nippon filed

1 applications with the Japanese government to raise Fuel Surcharges on international fares. In a
2 news release announcing the Fuel Surcharge hike, a representative for Japan Air said:

3 "The application follows a special meeting of the members of the International Air
4 Transportation Association in Geneva, May 28 [2004] when a resolution was discussed
5 to raise fares in the wake of increased fuel prices. This resolution has now been
6 adopted."

7 Japan Air and All Nippon were in lockstep on June 8, 2004, both announcing on that day a five
8 percent Fuel Surcharge would go into effect on the same day, July 1, 2004.

9 c. 2005 International Flight Services Association, Global Leadership
10 Conference – Asia/Pacific, August 30 – September 1, 2005, Tokyo, Japan: this meeting was
11 labeled "The Challenge of Change." Among the participants were executives from Japan Air,
12 Continental Airlines, Cathay Pacific Airways, Thai Air, Northwest Airlines, and Asiana
13 Airlines.

14 d. 2nd Annual Asia Pacific & Middle East Aviation Outlook Summit 2006,
15 December 5-6, 2005 Kuala Lumpur, Malaysia: the theme of this meeting was "Towards Best
16 Practice; Maximising Revenues and Minimising Costs." Attendees included Dato Seri Bashir
17 Ahmad, Malaysia Airport CEO; Willy Boulter, Commercial Director for Virgin Atlantic
18 Airways; and Stanley Kuppusamy, President, International Relations, Singapore Airlines. Fuel
19 Surcharges were a topic of discussion.

20 e. Aviation Emergency Response 2006, AAPA sponsored, September 19-
21 21, 2006, Bangkok, Thailand: this meeting was attended by international airport officials and
22 AAPA executives. Meetings were held on increasing revenues in the transpacific area by way of
23 Fuel Surcharges and other financial means.

24 f. 3rd Annual Asia Pacific & Middle East Aviation Outlook Summit 2006,
25 November 9-10, 2006, Singapore: executives from most of the Defendants participated in this
26 meeting, including Geoff Dixon, CEO of Qantas and Huang Cheng Eng, Executive VP for
27 Singapore Airlines. One of the issues presented and discussed was "*Fighting Costs: Fuel prices
28 and managing risk exposure.*"

g. AAPA Forum, November 28-29, 2006, Bandar Seri Begawan, Brunei Darussalam: more than 120 aviation industry stakeholders attended this meeting, organized by AAPA. At this meeting, Defendants and others discussed Fuel Surcharges.

h. Asia Pacific Aviation Summit, July 24-25, 2007, Sydney, Australia: this meeting was arranged by the Asia Pacific aviation industry. Some of the issues discussed included the impact of the investigation by the U.S. Department of Justice into fare price fixing. Another topic was "working together efficiently" to diffuse the investigation of added surcharges.

70. Alliance memberships by airlines are as follows:

- a. Air New Zealand: member of AAPA, Star Alliance and IATA.
- b. All Nippon: member of AAPA, Star Alliance and IATA.
- c. American Airlines: member of Oneworld and IATA.
- d. Cathay Pacific Airways: member of AAPA, Oneworld and IATA.
- e. China Airlines: member of AAPA and IATA.
- f. EVA Airlines: member of AAPA and IATA.
- g. Japan Air: member of AAPA, Oneworld and IATA.
- h. Malaysia Airlines: member of AAPA and IATA.
- i. Northwest Airlines: member of Sky Team Alliance and IATA.
- j. Qantas Airways: member of AAPA, Oneworld and IATA.
- k. Singapore Air: member of AAPA, Star Alliance and IATA.
- l. Thai Airways: member of AAPA, Star Alliance and IATA.
- m. United Airlines: member of Star Alliance and IATA.

Code Sharing Business Partnerships

71. In addition to the four different alliances/trade groups, various Defendants are in effect business partners with each other through what is called "code sharing." Code sharing is a business term which first originated in 1990 when Qantas and American Airlines combined services between an array of U.S. and Australian cities. Code sharing is a legal business arrangement. However, it also provides a mechanism to conduct illegal activity.

1 72. A code share is part of a “cooperative services” agreement between two carriers.
2 It refers to the practice where a flight operated by an airline is jointly marketed as a flight for
3 one or more other airlines. Most major airlines today have code sharing partnerships with other
4 airlines. “Code” refers to the identifier used in the flight schedule, generally the 2-character
5 International Air Transport Association airline designator code and flight number. For example,
6 YY123, flight 123 operated by the airline YY, could be sold by airline ZZ as ZZ456. It is a
7 business partnership that allows airlines to earn revenue by selling tickets on a partner’s flight.

8 **The Investigations**

9 73. The U.S. Department of Justice (“DOJ”) began investigating air passenger fuel
10 surcharge conspiracies worldwide in 2006, particularly transatlantic routes to and from the West
11 Coast. When the DOJ announced a \$300 million settlement with British Airways on August 1,
12 2007, it cited passenger transatlantic routes. In its news release, the DOJ said: “The Department
13 also charged that between August 2004 and February 2006, British Airways engaged in a
14 conspiracy to suppress and eliminate competition by fixing the Fuel Surcharge charged to
15 passengers on long-haul international flights, including flights between the United States and the
16 United Kingdom.”

17 74. The DOJ also focused on transpacific flights to and from the United States,
18 noting that their investigation is “ongoing” and includes other Defendants named herein.

19 75. The DOJ announced a settlement with Korean Air for fare price fixing on flights
20 from the United States and Korea. The DOJ stated that Korean Air has “agreed to cooperate
21 with the Department’s ongoing investigation.” Korean Air’s unnamed co-conspirator in the
22 passenger fare price fixing via Fuel Surcharges was widely reported to be Asiana Airlines,
23 which sought amnesty.

24 76. Both Korean Air and Asiana Airlines are among the top transpacific carriers in
25 the world. It was not the first time Korean Air and Asiana Airlines have been implicated in
26 collusion and anticompetitive behavior. The Korean Fair Trade Commission fined Korean Air
27 and Asiana Airlines in 2001 for conspiring to set passenger air transportation services in Korea.

77. In addition, several of the Defendants and unnamed co-conspirators have been identified as targets and or subjects in international investigations by the U.S. Department of Justice and the European Union into air cargo Fuel Surcharge price fixing. The targets, many of which are also named in civil suits include Defendant All Nippon, American Airlines, Asiana Airlines, Defendant Japan Airlines, Korean Airlines, Defendant Northwest Airlines, Defendant Qantas Airways, and Defendant United Airlines. In both the air passenger and cargo investigations, Defendants and other airlines are accused of developing and participating in conspiracies to increase revenue by assessing inflated Fuel Surcharges.

Admissions By Co-Conspirators

78. On August 13, 2007, Qantas Chief Executive Officer Geoff Dixon announced that Qantas Airways would set aside \$40 million to cover a potential fine in the United States as a result of Fuel Surcharges in its freight division. In a news release, Dixon was quoted as saying:

“On August 1, 2007, the U.S. Department of Justice announced that British Airways and Korean Air had agreed to plead guilty and pay separate US\$300 million criminal fines for their roles in conspiracies to fix prices of passenger and cargo flights. British Airways subsequently announced that US\$200 million of its fine related to cargo. Based on these developments, a decision has been made to make a US\$40 million (A\$47 million) provision in the 2006/7 Financial Accounts.”

Dixon was also quoted as saying:

“We have investigated this issue thoroughly and are confident that the unacceptable conduct was limited to a small number of people.”

79. On October 6, 2007, the Japanese daily newspaper *Asahi Shimbun* reported that Japan Airlines International would book roughly a \$171 million charge for potential fines from a global price fixing probe by U.S. and European Union officials. The newspaper said:

“The company’s move comes after the U.S. Justice Department fined British Airways plc and Korean Air Lines Co. \$300 million each in August for fixing prices of passenger and cargo flights with other airlines. The companies allegedly conspired to set fuel surcharges when oil prices rose.”

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VIOLATIONS ALLEGED

First Claim for Relief

(Violation of Section 1 of the Sherman Act)

80. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

81. Beginning at a time unknown to Plaintiffs, but no later than January 1, 2004, and continuing through the present, Defendants and their co-conspirators entered into a continuing agreement, understanding, and conspiracy in restraint of trade to artificially raise, fix, maintain and/or stabilize the amount of Fuel Surcharges paid by Plaintiffs and the other Class Members, ostensibly to defray increased fuel costs, in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

82. In formulating and carrying out the alleged agreement, understanding, and conspiracy, the Defendants and their co-conspirators did those things that they combined and conspired to do, including, but not limited to the acts, practices, and course of conduct set forth above, and the following, among others:

- a. Agreed to fix, raise, maintain and stabilize the price of Air Passenger Services and Fuel Surcharges charged in the United States and throughout the world;
- b. Implemented Fuel Surcharge increases and decreases in the same or similar amounts;
- c. Announced Fuel Surcharge increases and decreases at or near the same times;
- d. Implemented Fuel Surcharge increases and decreases at or near the same times;
- e. Participated in meetings, phone conferences and other communications to exchange information used by Defendants to formulate and implement the Fuel Surcharges; and

1 f. Signaled and communicated the formulation and implementation of the
2 Fuel Surcharges.

3 83. During the Class Period, the Defendants increased, as a ratio to external costs—
4 and profits—the Air Passenger Services and Fuel Surcharges they charged. These increases in
5 Air Passenger Services and Fuel Surcharges cannot be explained by actual increases in fuel
6 prices or supply/demand forces, but rather were the result of anticompetitive conduct.

7 84. The illegal combination and conspiracy alleged herein has had the following
8 effects, among others:

9 a. Price competition in the contracting of Air Passenger Services has been
10 restrained, suppressed and/or eliminated;

11 b. Air Passenger Services and Fuel Surcharges assessed thereon by
12 Defendants and their co-conspirators have been fixed, raised, maintained
13 and stabilized at artificially high, non-competitive levels; and

14 c. Those who purchased Air Passenger Services and paid Fuel Surcharges
15 have been deprived the benefits of free and open competition.

16 85. During the Class Period, Plaintiffs and members of the Class purchased Air
17 Passenger Services from one or more Defendants and their co-conspirators.

18 86. As a direct and proximate result of Defendants' illegal contract, combination and
19 conspiracy, Plaintiffs have been injured and will continue to be injured in their business and
20 property by paying more for Fuel Surcharges assessed by the Defendants and their co-
21 conspirators than they would have paid and will pay in the absence of the combination and
22 conspiracy.

23 87. Plaintiffs and the members of the Class request three times their actual damages
24 that resulted from Defendants' illegal conspiracy to fix Fuel Surcharges on Air Passenger
25 Services. The total amount of damages is presently undetermined.

26 88. Plaintiffs and the Class are entitled to an injunction against Defendants,
27 preventing and restraining the violations alleged herein.

28 //

FRAUDULENT CONCEALMENT

89. Throughout the relevant period, Defendants affirmatively and fraudulently concealed their unlawful conduct against Plaintiffs and the Class.

90. Plaintiffs and the members of the Class did not discover, and could not discover through the exercise of reasonable diligence, that Defendants were violating the antitrust laws as alleged herein until the governmental investigations of their actions were first announced. Nor could Plaintiff and the members of the Class have discovered the violations earlier than that time because Defendants conducted their conspiracy in secret, concealed the nature of their unlawful conduct and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection. The conspiracy was by its nature self-concealing.

91. Defendants engaged in a successful price-fixing conspiracy with respect to Air Passenger Services and Fuel Surcharges, which they affirmatively concealed, in at least the following respects:

a. By agreeing among themselves not to discuss publicly, or otherwise reveal, the nature and substance of the acts and communications in furtherance of their illegal scheme; and

b. By giving false and pretextual reasons for their Fuel Surcharge increases during the relevant period and by describing such increases falsely as being the result of external costs, namely the rising cost of jet fuel, rather than collusion.

92. As a result of Defendants' fraudulent concealment of their conspiracy, Plaintiffs and the Class assert the tolling of any applicable statute of limitations affecting the rights of action of Plaintiffs and the members of the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray as follows:

A. That the Court determine that this action may be maintained as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure;

1 B. That the Court adjudge and decree that the unlawful conduct, contract,
 2 combination and conspiracy alleged herein constitutes a *per se* unreasonable restraint of trade in
 3 violation of Section 1 of the Sherman Act, 15 U.S.C. §1 and Sections 4 and 26 of the Clayton
 4 Act;

5 C. That judgment be entered against Defendants, jointly and severally, and in favor
 6 of Plaintiffs and the Class they represent for damages as allowed by the Sherman Act, as
 7 determined to have been sustained by them, together with costs of suit, including reasonable
 8 attorneys' fees;

9 D. That Defendants, their co-conspirators, successors, transferees, assigns, parents,
 10 subsidiaries, affiliates, and the officers, directors, partners, agents and employees thereof, and all
 11 other persons acting or claiming to act on behalf of Defendants, or in concert with them, be
 12 permanently enjoined and restrained from, in any manner, directly or indirectly, continuing,
 13 maintaining or renewing the combinations, conspiracy, agreement, understanding or concert of
 14 action, or adopting or following any practice, plan, program or design having a similar purpose
 15 or effect in restraining competition;

16 E. That the Court award Plaintiffs and the Class they represent attorneys' fees and
 17 costs, and pre-judgment and post-judgment interest as permitted by law; and

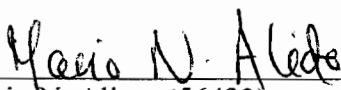
18 F. That the Court award Plaintiffs and the Class they represent such other and
 19 further relief as may be necessary and appropriate.

20 **JURY DEMAND**

21 Plaintiffs demand a trial by jury of all of the claims asserted in this Complaint so triable.

22
 23 Dated: December 19, 2007

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